

Report to Cabinet

Subject: Amendments to Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Procedure

Date: 8 November 2012

Author: Council Solicitor and Monitoring Officer

Wards Affected

Not applicable.

Purpose

To obtain Cabinet approval for amendments to the Council's RIPA Policy and Procedure Document to take account of changes to RIPA legislation (which came into force on 1st November 2012) and a recommendation made by the Office of the Surveillance Commissioner following the Council's recent inspection.

To obtain a delegation from Cabinet to enable the Corporate Director to authorise Officers pursuant to Section 223 Local Government Act 1972 to appear on the Council's behalf before a Magistrates' Court to obtain judicial approval of RIPA authorisations.

Key Decision

This is not a key decision.

Background

- 1.1 The Regulation of Investigatory Powers Act 2000 is intended to regulate the use of investigatory powers exercised by various bodies, including local authorities, and ensure that they are used in accordance with human rights obligations. This is achieved by requiring certain investigations to be authorised by an appropriate officer before they are carried out. The investigatory powers open to the Council are directed covert surveillance in respect of specific operations and the use of covert human intelligence sources (CHIS). Local authorities can only undertake such activities if they are for the prevention or detection of crime.
- 1.2 An initial policy and procedure document was drafted by Legal Services in July 2001. The Policy document has been amended over the years following recommendations from the Office of the Surveillance

Commissioner, usually as a result of their inspections of the Council which occur every 3 years.

- 1.3 On 6th September 2012 the Council were subject to one of those three yearly inspections by the Office of the Surveillance Commissioner. The report from the Inspector was very positive and the standard of RIPA authorisations and procedures at the Council remains high, however, the inspector did make one recommendation that the definition of CHIS in the Council's Policy document be expanded.
- 1.4 As of 1st November 2012 RIPA will be amended following the coming into force of sections 37 and 38 of the Protection of Freedoms Act 2012 and the changes to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 brought in by the Covert Human Intelligence Sources (Amendment) Order 2012.
- 1.5 This will mean that from 1st November 2012 any Council authorisations to carry out directed surveillance or use a CHIS under RIPA will require approval from a Justice of the Peace at the Magistrates' Court.
- 1.6 The authorisation process within the Council will remain the same, the Investigating Officer will complete a RIPA application form which will be passed to an authorising officer (Corporate Director or Chief Executive) who will authorise the activity if it is necessary and proportionate and for the purposes of preventing or directing crime. It is envisaged that the Investigating Officer will then take the authorisation to the Magistrates' Court and in a private hearing with at least 1 Justice of the Peace will ask for the authorisation to be approved. The Magistrates can then either:
 - approve the authorisation, in which case the surveillance or CHIS activity would commence,
 - refuse the application and suggest some improvements to it, or
 - refuse to approve the authorisation and quash the authorisation altogether.
- 1.7 The timescales of RIPA remain the same and all authorisations will run for 3 months from the date the authorisation is approved by the Justice of the Peace. The authorisations should be reviewed throughout that 3 month period by the Authorising Officer in the Council. If officers wish to renew the RIPA authorisation for a further 3 month period, an authorisation for renewal will also have to be approved by the Justice of the Peace.
- 1.8 In addition, as of the 1st November 2012, directed surveillance will only be authorised by the Council where it is for the purpose of preventing or detecting a criminal offence where that criminal offence carries a sentence in the Magistrates' or the Crown Court of at least 6 months imprisonment or is an offence involving the sale of alcohol or tobacco to children. This is the "serious crime threshold". This does not apply to

CHIS, only directed surveillance. This may impact significantly on the way this Council utilise RIPA in investigations as there is no provision for directed surveillance in respect of “anti-social behaviour”.

Proposal

- 2.1 Given the change in the legislative framework of RIPA from 1st November 2012 and the recommendations made by the Inspector following the 6th September inspection, it is proposed that the Council’s RIPA Policy document be amended so that it remains fit for purpose.
- 2.2 At Appendix 1 to this report is an amended Policy document. The Policy document has been amended as follows:
 - To include the information regarding judicial approval and the “serious crime” threshold.
 - To expand the definition of CHIS in accordance with the recommendation of the Inspector.
 - The original Appendix A to the Policy (a flow chart) has been removed as it is no longer accurate, as a result the remaining Appendices to the Policy have been re-numbered. Appendix A is now the Directed Surveillance and CHIS forms, Appendix B is now the Home Office Codes of Practice for Covert Surveillance and CHIS.
 - Two new Appendices have been added to the Policy that have not previously been included, these are; Appendix C – Home Office Guidance to Local Authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance, and, Appendix D – Home office Guidance for Magistrates’ Courts in England and Wales for a Local Authority application seeking an order approving the grant or renewal of a RIPA authorisation or notice.

Cabinet is to note that only the new Appendices C and D are attached to this report as they are the only new documents to be incorporated as part of the new Policy document. Appendix A and B will be included in the approved Policy.

- 2.3 It is proposed that Cabinet adopt this amended Policy Document so that officers can continue with their use of RIPA with the appropriate guidance in place.
- 2.4 In addition, given that it is suggested from the Home Office guidance that it is the “Investigating officer” rather than the authorising officer who obtains judicial approval for RIPA authorisations it is proposed that Cabinet delegate the power to the Corporate Director to authorise Officers to appear at the Magistrates’ court for the purposes of obtaining a RIPA authorisation approval. This authorisation can be given under s.223 of the Local Government Act 1972.

Alternative Options

- 3.1 Not to adopt the amended Policy and Procedure document, in which case the existing Policy would not be fit for purpose. Officers would still be required to follow the statutory rules in respect of RIPA authorisations which override any Policy document.
- 3.2 Not to delegate the power to authorise appearance in the Magistrates' Court to Officers. If the power to appear at the Magistrates' Court in respect of RIPA authorisation approval is not delegated to officer level it would be down to representatives from the legal department to attend court in such instances or the Leader to authorise individual officers. The Home Office guidance specifically refers to investigating officers attending court as it is felt that they are the most knowledgeable about the investigation. It is investigating officers who complete the initial application for RIPA and as such they are in a position to best explain why the investigation technique requested is necessary and proportionate in each case.

Financial Implications

- 4 There is no fee at the Magistrates' Court for the RIPA authorisations to be considered and as such there should be no direct financial implications to the Council.

Appendices

- 5 Appendix 1 – Gedling Borough Council Regulation of Investigatory Powers Act 2000 Policy including a copy of new Appendices C and D.

Background Papers

- 6 None identified.

Recommendation(s)

THAT Cabinet:

- (a) **approves the amendments to the Regulation of Investigatory Powers Act 2000 Policy document; and**
- (b) **delegates authority to the Corporate Director to authorise Officers pursuant to Section 223 Local Government Act 1972 to appear on the Council's behalf before a Magistrates' Court to obtain judicial approval of RIPA authorisations.**

Reasons for Recommendations

- 7 (a) To ensure the Council's Policy document for RIPA remains up to date, complies with the Office of the Surveillance Commissioners' recommendation and is fit for purpose.
(b) To ensure efficient decision making and avoid the Executive from becoming overwhelmed by detailed managerial and operational matters, it is appropriate that this function is delegated to Officers.